

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>DAVID ANTHONY MCKINNEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 07-495-GPM</b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM AND ORDER**

**MURPHY, District Judge:**

David Anthony McKinney, a former inmate in the United States Penitentiary at Marion, Illinois, filed this action under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346, 2671-2680. McKinney claims that the warden, E.A. Stepp, ordered the confiscation of his prayer oil. He was not able to resolve this matter through the administrative process, so now he brings this action seeking damages for the loss of prayer oil.

On September 24, 2008, the Court substituted the United States as a defendant in the action and dismissed Defendants Alberto Gonzales and E.A. Stepp (*see* Doc. 8). After being served with process, the United States filed a motion to dismiss the action for lack of subject matter jurisdiction. The United States argues that this Court lacks subject matter jurisdiction because (1) McKinney failed to timely file suit after receiving notice of the denial of his administrative claim; and (2) a claim for lost property detained by law enforcement officers is not cognizable against the United States under the Federal Tort Claims Act (Doc. 11, p. 3).

The Government's motion was filed on October 22, 2008; McKinney's response was due

on or before November 24, 2008 (*see* Doc. 12). McKinney was clearly informed of this deadline by Magistrate Judge Proud on October 23, 2008. No response was filed.

Pursuant to Southern District of Illinois Local Rule 7.1(c), “[f]ailure to timely file an answering brief to a motion may, in the Court’s discretion, be considered an admission of the merits of the motion.” The Court exercises its discretion in this case, and the motion to dismiss (Doc. 11) is **GRANTED**. This action is **DISMISSED** for lack of subject matter jurisdiction. The Clerk shall enter judgment accordingly.

**IT IS SO ORDERED.**

DATED: 12/09/08

s/ *G. Patrick Murphy*  
G. Patrick Murphy  
United States District Judge